UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

(HON. PAMELA K. CHEN)

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UNITED STATES OF AMERICA,

Plaintiff,

-against-

ALBERTO RANDAZZO,

Defendant.

---X

Case No.: 1:14-CR-189

DEFENDANT'S AFFIDAVIT IN SUPPORT OF MOTION TO SUPPRESS

State of New York)
) ss.
County of Kings)

ALBERTO RANDAZZO, being duly sworn, deposes and says:

1. I am the Defendant in the above-captioned action and submit the following Affidavit in Support of Defendant's Motion to Suppress.

2. I make this Affidavit upon information and belief. As to those matters which are not based upon my personal knowledge, the source of my information is from my review of my attorney's file materials, including the discovery herein.

3. On or about January 2013, I was involved in a relationship with Jenny Zerello ("Zerello"), who I met in October of 2012 on Match.com.

4. On January 27, 2013, Zerello was staying at my apartment located at 23-15 31st Street, Astoria, New York. At approximately 3:20am, I was awoken by Zerello who illegally accessed my phone and viewed my text messages. Zerello was upset by some of my text

messages with other women. Zerello stated that she was sorry for going into my cell phone because she had no right to do so. She no longer wanted to discuss the matter and left the apartment.

5. At this time, I owned an iPhone and maintained an email address with AOL. Both my iPhone and AOL account were password/passcode protected.

6. At no time during the course of our relationship did I give Zerello permission to access my iPhone or AOL account.

7. Furthermore, at no time during the course of our relationship did I share my iPhone passcode or my AOL password with Zerello.

8. I have always expected that my iPhone and AOL account, and the digital contents therein, were private. To this end, I maintained a steel lockbox in my apartment to store my username, passwords, etc.

9. I believe my expectation of privacy with respect to my iPhone and AOL account to be reasonable in light of today's technology and the vast amount of personal information that can be stored on these modern devices.

10. I subsequently learned that Zerello, by her own admission, illegally hacked into my iPhone and read my private text messages on January 27, 2013 at approximately 3:48am. At or about the same time, Zerello also stole my AOL password, taking a picture of it with her phone. She did this with the intent to unlawfully access my AOL account.

11. Between January 27, 2013 and February 12, 2013, I had several text conversations with Zerello trying to reconcile our relationship culminating in an "in-person" meeting at a Chili's restaurant on February 9, 2013.

12. During the time period of January 27, 2013 and February 12, 2013, based upon the nature of the text messages I was receiving from Zerello, it became apparent to me that she was being coached, aided, assisted or otherwise encouraged by law enforcement.

13. Zerello's brother-in law, Will Mauro ("Mauro") is a member of the Westchester County Police Department. I immediately thought that she was being coached, aided, assisted or otherwise encouraged by Mauro. It was obvious and apparent that Zarello and Mauro were seeking to obtain incriminating statements from me. At this point, I asked to speak with her on the phone and she would not allow that, this I found to be highly unusual for her.

14. On February 9, 2013, I met with Zerello at a Chili's restaurant, she immediately started asking many questions about my fantasies. Zerello appeared to be overly interested in knowing all of my fantasies and sexual desires. It was unusual for Zerello to ask questions of this nature since it was generally not of her character and she had also been very upset over one specific fantasy text I shared with another woman. At this point, it was clear that Zerello's intent was to obtain incriminating statements from me.

15. On February 10, 2013, Zerello and I began texting again. Again, at her initiative, the conversation quickly turned into her desire to know my fantasies. Zerello had mentioned some specific acts that she had done in the past as well as sexual acts she wanted to do. Based upon her unusual openness regarding these topics and her prodding me for information, I immediately realized that it was likely not her I was texting.

16. During this same above-referenced time period, January 27, 2013 and February 12, 2013, I began to receive electronic alerts that someone was accessing my AOL account.

17. By her own admission, Zerello illegally accessed and searched my AOL account during the above-referenced time period

18. On or about February 12, 2103, Zerello anonymously contacted the New York City Police Department Internal Affairs Bureau ("IAB") and reported that she viewed a text message between me and unknown woman that stated "that [I] he wanted to have sex with the woman in her son's bed so that his [my] scent could stay on the child's bed." Zerello also admitted to unlawfully accessing my AOL account [1] and found "inappropriate" pictures of mothers and their children.

19. On or about February 12, 2013, Sgt. Iris Perez ("Sgt. Perez") of IAB traced the anonymous call back to Zerello and contacted her by phone. Sgt. Perez also interviewed Zerello "in person" on February 13, 2013 and again "by telephone" on February 14, 2013.

20. During her interviews with Sgt. Perez, Zerello made many statements that described lawful conduct and/or fantasies. For example, Zerello tells Sgt. Perez that I sent her a "random photo" of a woman cradling her infant with her hand placed in his crouch. That photo was not child pornography and was taken off of a match.com users profile. In fact, Zarello herself commented by text stating "well it def looks like a regular pic to me baby, but yeah its sexy." Additionally, Zerello indicates that I texted her "it would be really hot if you could take a picture with your son with your hands on his waistline". Here again, while some would find this request odd or unusual, there is nothing illegal about it. These statements, and their inclusion in Sgt. Perez's search warrant application, served no other purpose than to inflame, prejudice and mislead Judge Zoll in Queens Criminal Court.

[1] The referenced email address in the search warrant application of Sgt. Iris Perez is SCIARA76@YAHOO.COM, this is not my email address. (USA 374).

21. At some point, prior to February 15, 2013 at 5:54pm[2], Zerello sends and/or allows Sgt. Perez to access my AOL account and/or search the content of the data and /or images that she illegally obtained by hacking my AOL account.

22. Sgt. Perez's search was done with knowledge that the information was obtained illegally, without a search warrant and without "virtual certainty" that the data she was accessing was, in fact, child pornography.

23. Furthermore, Sgt. Perez used Zerello as an agent by directing and encouraging Zerello to provide her with access to potential evidence that Sgt. Perez knew was obtained by illegal means - and that which she knew she could not otherwise lawfully obtain without a valid search warrant.

24. For the reasons set forth above, and those in the accompanying submission of my attorney, Anthony J. DiFiore, Esq., the motion should be granted in its entirety.

____
Alberto Randazzo

Sworn to before me this 7th
Day of October, 2015

____
Notary Public

ANTHONY J. DIFIORE
Notary Public, State of New York
No. 02DI5079506
Qualified in Westchester County
Commission Expires June 9, 2019

[2] This is the date and time that Judge John Zoll signed a search warrant in Queens Criminal Court. (USA 379).